

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**ARCHIE TERRELL and
IDA MAE TERRELL**

PLAINTIFFS

v.

CASE NO. 3:05-CV-00058 GTE

DELAWARE NORTH CORPORATION, et al

DEFENDANTS

ORDER GRANTING MOTION TO DISMISS

On August 16, 2005, the Court entered an Order holding in abeyance Defendants' Motion to Dismiss. The Court directed the parties submit additional information to clarify the *res judicata* issues raised. The parties having complied with that Order, the Court is prepared to rule on the Motion to Dismiss.

The Motion seeks dismissal of this action on *res judicata* grounds. Plaintiffs had initiated an action in the Crittenden County Circuit Court on March 24, 2004 based upon the same or similar factual circumstances and alleging substantially similar claims to the case at bar. Plaintiffs moved for a non-suit and the state court dismissed that action without prejudice on August 20, 2004. However, Defendants filed a Rule 60 motion to modify the dismissal on September 20, 2004 arguing that Plaintiffs' action was time-barred. Specifically, the Defendants argued that the Terrells failed to commence their cause of action within the applicable statute of limitations.

A hearing was scheduled for October 8, 2004, but after objections by the Terrells, the hearing was postponed until February 7, 2005, and postponed again until March 8, 2005. On March 23, 2005, the Crittenden County Court entered an order granting the Rule 60 motion. The state court noted that Mr. and Mrs. Terrell had been afforded timely and proper notice of the March 8th hearing, but the

plaintiffs failed to appear. The Crittenden County Court ordered its dismissal order be modified to dismiss that case with prejudice and barred the Terrells from re-filing.

It appears to the Court that the state court's dismissal with prejudice constitutes an adjudication on the merits with full *res judicata* effect. Plaintiffs have presented no information to contradict this conclusion or to convince the Court otherwise. Accordingly, the Court grants Defendants' Motion to Dismiss.

IT IS THEREFORE ORDERED THAT the Motions to Dismiss or for Summary Judgment (Dkt. #2, 7, 20) be, and they are hereby, GRANTED. The Complaint shall be dismissed in its entirety.

Dated this 6th day of October, 2005.

/s/Garnett Thomas Eisele_____
UNITED STATES DISTRICT JUDGE